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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 492

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,
Petitioner,

vs.

NATIONAL DISTILLERS PRODUCTS CORPORATION, a corporation,
Respondent.

Brief for Respondent in Opposition

On Petition for Writ of Certiorari to the District Court of Appeal, State of California

STODDARD B. COLBY,
15 Broad Street,
New York 5, New York.

THEODORE R. MEYER,
HART H. SPIEGEL,
111 Sutter Street,
San Francisco 4, California.

Attorneys for Respondent.

BREED, ABBOTT & MORGAN
15 Broad Street,
New York 5, New York.

BROBECK, PHLEGER & HARRISON,
111 Sutter Street,
San Francisco 4, California.

Of Counsel

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO 5

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Brief for Respondent in Opposition

On Petition for Writ of Certiorari to the District Court of Appeal, State of California

The respondent above named herewith presents its brief in opposition to the petition filed herein for writ of certiorari to review the decision and judgment of the District Court of Appeal, State of California, First Appellate District, reported in 141 Advance California Appellate Reports 719.

QUESTIONS PRESENTED

The issue in this case is whether respondent is entitled to a refund of $5,122.53, being the amount of unsecured per-

sonal property taxes assessed in respect of 9,195 cases of alcoholic liquors found by the trial court to have been in the channels of export and of foreign commerce on tax day, March 3, 1952.[1]

The trial court found *as a fact* that these liquors, produced, bottled and bonded in Maryland for export or for use as ships' stores, shipped into California for said exportation or use, and thereafter so exported or used were on that tax date in the channels of interstate and foreign commerce; that the liquors were irrevocably dedicated to such export or use by government controls designed and effective, with certainty, to insure such disposition; and that such liquors are never diverted to domestic use or sale.

The trial court held, *as a matter of law*, that as of that tax date these liquors were exempted from this local taxation by the exemption provisions and controls contained in the Tariff Act of 1930 whose recited purposes are "to provide revenue, *to regulate commerce with foreign countries, to encourage industries of the United States*, to protect American labor, and for other purposes." The court's decision was in keeping with this Court's holding in *Board of Trustees v. United States*, 289 U.S. 48 (1933), with respect to a similar predecessor tariff act:

> "The Tariff Act of 1922 is entitled—'An Act to provide revenue, *to regulate commerce with foreign countries, to encourage the industries of the United States*, and for other purposes.' The Congress *thus asserted that it was exercising* its constitutional authority '*to regulate commerce* with foreign nations.' Art. I, § 8, par. 3. * * * It is an essential attribute of the power that

1. Petitioner has not sought review of that portion of the judgment allowing a refund of $4,708.92 of tax assessed on imported liquor in its original packages. This issue is therefore excluded by the petition. Irvine v. California, 347 U.S. 128, 129 (1954).

All italics and brackets in this brief have been supplied.

> it is exclusive and plenary. As an exclusive power, its exercise may not be limited, qualified or impeded *to any extent by state action.*" (289 U.S. 48, 56-57)

The California District Court of Appeal by unanimous decision affirmed the trial court; and the California Supreme Court denied a hearing, no judges voting for a hearing.

The only questions are: (a) an undisputed factual one, not forming the basis in any event for the granting of a writ of certiorari, i.e., whether on tax day, March 3, 1952, these liquors were in the channels of interstate and foreign commerce and irrevocably dedicated to exportation or use as ships' stores, and (b) whether the liquor was exempt from tax on March 3, 1952 because of action taken by the Federal Government in the exercise of its commerce power under the Tariff Act of 1930 to permit the tax-free exportation of the liquor.

Petitioner's second question is foreign to this case and somewhat misleading. Petitioner suggests that the second question is whether the grant of an exemption from tax by Congress with respect to this liquor "precludes the exercise by a state of its taxing power over such articles *from the moment of commencement of production of said articles* * * *" (Petition, p. 4). But, as the facts plainly show, all the liquor was produced and bottled in *Maryland,* shipped by common carrier under bond to *California,* and it was only while the liquor was temporarily in *San Francisco* after its shipment from Maryand that the property tax was sought to be assessed. Respondent's intimation that the lower courts held these goods were protected from taxation "from the moment of the commencement of production [in Maryland]" is a question that was never passed on by the California courts and obviously presents no basis for granting the writ.

STATEMENT OF FACTS

The Tariff Act of 1930 contains elaborate provisions permitting the manufacture and shipment of liquor in bond for exportation or use as supplies of vessels engaged in foreign trade or employed in the fisheries, free of federal duties or taxes. The trial court found (Finding VIII, Cl. Tr. 35-6) that, in accordance with the requirements of this Tariff Act and federal regulations issued thereunder, 2,706 cases of the liquor here involved had been rectified, reduced in proof and bottled in a United States customs bonded warehouse, Class 6, in Baltimore, Maryland; stamped, packaged, and labeled for export; and immediately thereafter transported by bonded common carrier to a United States customs bonded warehouse, Class 3, in San Francisco for overseas shipment. This liquor was 86 or 86.8 proof (R. Tr. 15, 30) and could be removed from the Baltimore warehouse *only for exportation* (R. Tr. 15, 30; 19 C.F.R. § 19.15). Respondent manufactured and bottled this liquor solely for export and not for domestic use (R. Tr. 13, 17; 20-26, 30; 9-10). Such liquor cannot be diverted to domestic sale or use and is never so diverted (R. Tr. 13, 26, 52; 19 C.F.R. § 19.15).

The trial court found further (Finding VIII, Cl. Tr. 35-6) that 1,208 cases of said liquor had been bottled in Baltimore, Maryland, under internal revenue bond; stamped, packaged, and labeled for export; and immediately thereafter transported by bonded common carrier to an internal revenue bonded warehouse in San Francisco for overseas shipment. The liquor was 86 proof (R. Tr. 10, 15). The labels carried the legend "Bottled in Bond for Export." They complied with the export requirements and differed from labels used domestically (R. Tr. 10, 15). The cases were marked "For Export from U.S.A." (R. Tr. 11) and contained other legends relating to exports (R. Tr. 11). A blue export strip stamp was attached over the mouth of

the bottles (R. Tr. 11) in accordance with regulations applicable to liquor bottled in bond for export (26 C.F.R. §§ 185.960, 185.977-981). The liquor moved to San Francisco by bonded carrier (R. Tr. 13, 34) immediately after bottling (R. Tr. 13). It was covered by bonds conditioned on exportation. Pursuant to the applicable law and regulations, it was checked out of the San Francisco warehouse and placed aboard a vessel for export shipment under customs supervision (R. Tr. 34), and with the use of prescribed Treasury Form 206 (26 C.F.R. § 185.773). Respondent did not divert this liquor and has never diverted liquor bottled in bond for export to domestic use (R. Tr. 13, 15). The manufacture and shipment overseas complied with federal statutes and regulations in every respect (R. Tr. 10, 41).

The trial court found further (Finding VIII, Cl. Tr. 35-6) that 5,281 cases of said liquor had been bottled, stamped, packaged, and labeled especially for export in Baltimore, Maryland; and immediately thereafter transported by bonded common carrier to the export storage room of a public warehouse in San Francisco, subject to a drawback or refund of previouly paid internal revenue taxes upon proof of export in accordance with appropriate federal regulations. These bottles were labeled "For Export," and the cases carried the legend "Bottled for Export from the U.S.A." (R. Tr. 38) The liquor moved to San Francisco by bonded common carrier (R. Tr. 13, 38) immediately after bottling (R. Tr. 13); and was in the export storage room at the South End Warehouse in San Francisco on tax day. The final movement aboard ship and to sea was under customs supervision (R. Tr. 38-39). The liquor was 86 or 86.8 proof (R. Tr. 15, 38). It was economically unfeasible to divert it to domestic use or sale (R. Tr. 15); and respondent did not so divert this liquor and has never so diverted such liquor in the past (R. Tr. 18).

The trial court also found that, pursuant to the Tariff Act of 1930 and regulations issued thereunder, all of the liquor, while in bond and under the supervision and control of appropriate federal government agencies, was placed at various times after March 3, 1952 (tax day) aboard ship for transportation to destinations in foreign countries or for use as supplies of vessels engaged in foreign trade or in the fisheries (Finding VIII, Cl. Tr. 36-7).

Finally, and significantly, the trial court found that the transportation of all said liquor to and through San Francisco and the movement aboard vessels, all under federal bond, for delivery to customers in foreign countries or for consumption on the high seas, *constituted integrated steps in a movement of goods in interstate and foreign commerce*[2] in accordance with plaintiff's plan and intent (Finding XI, Cl. Tr. 39).

REASONS FOR DENYING THE WRIT

(a) This case presents no substantial federal question nor any important point of law.

The first issue in this case is a simple issue of fact found in respondent's favor by the trial court, namely, that the liquors here involved were committed to exportation and were in the channels of interstate and foreign commerce when sought to be taxed by the City and County of San Francisco. This Court has already clearly delineated the principles which govern in this area. *Carson Petroleum Co. v. Vial*, 279 U.S. 95 (1929); *Coe v. Errol*, 116 U.S. 517

2. Petitioner states that "Some of this liquor had been in California since 1947." The word "some" refers to a part of one broken case (3/1000 of 1% of the liquor here involved)! And petitioner's reference to liquor in San Francisco from June 28, 1948 applies only to a few odd cases (less than 1% of the total). The trial court's finding is amply supported by the evidence, as the California appellate courts fully realized.

(1886); *Richfield Oil Corporation v. State Board of Equalization*, 329 U.S. 69 (1946); *Texas & N. O. R. R. v. Sabine Tram Co.*, 227 U.S. 111 (1913). Petitioner seeks merely to secure a review of the application of undisputed legal criteria to the facts of this case. Such a foundation for the petition presents no occasion for granting the writ.

The second question, whether certain exemption provisions contained in the Tariff Act of 1930 represent an exercise by Congress of its commerce power or an exercise solely of its taxing power, is of limited significance. To begin with, this Court has already laid down the controlling principles in such cases as *McGoldrick v. Gulf Oil Corporation*, 309 U.S. 414, 423 (1940); *Board of Trustees v. United States*, 289 U.S. 48 (1933); *J. W. Hampton, Jr. & Company v. United States*, 276 U.S. 394 (1928). The principles having been established, petitioner seeks to have this Court review the decision of the lower courts as to the application of these principles to this case.

Petitioner cites no pending litigation, no other states which have even contemplated much less attempted what the City and County of San Francisco recently sought to do, and no circumstance which lifts this case out of the general line of cases where ambitious county assessors have attempted to find a loophole in this Court's previous decisions. The California courts, acting without a single dissent at any stage of the proceedings, have provided adequate answer to the assessor in this case.

(b) This Court's prior decisions have been correctly applied: Exemption from tax may be accorded by Congress under the Commerce Power and not, as petitioner contends, solely under the Taxing Power.

Petitioner urges this Court to grant the writ in order to hold that if Congress *levies* a tax "pursuant to the taxing

power" and thereafter "provides for specific exemption under which articles shall be free from tax, both the levying of the tax and the *exemption* therefrom are an exercise of the taxing power *and of no other power.*" (Petition, p. 16) Petitioner argues that:

> "Where, *as in the case of articles of domestic manufacture,* there is no commerce involved[3] and the matter is one of exemption from internal revenue taxes levied pursuant to the taxing power of Congress, the only conclusion that can be reached is that *the granting of such exemption is an exercise of the taxing power and no other power.*" (Petition, p. 13)

Petitioner's theory that if a tax is levied under the taxing power, any exemption from the tax is *necessarily and solely* an exercise of the taxing power (although Congress may have intended the exemption as an exercise of its commerce power) is a novel proposition which this Court has already rejected. For example, the contention is completely inconsistent with this Court's decision in *McGoldrick v. Gulf Oil Corporation*, 309 U.S. 414 (1940). In that case, as this Court was careful to point out, the tax had been *imposed* by "Section 601(a), (c)(4) of the *Revenue Act* of 1932,[4] 47 Stat. 169, 260"; *exemption* from the tax for certain articles sold for use as ships' stores, etc. was provided by an *amendment to the Revenue Act of 1932*, 48 Stat. 256. This Court observed, however, that all of these revenue and *exemption provisions* were "in effect a part" of the Tariff Act of 1930;

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3. Most of petitioner's argument is based on this curious premise that in the case of domestic articles *there is no commerce involved.* The non-sequitur is apparent when it is considered that practically all our *export commerce* consists of domestic products.

4. Entitled "An Act to provide revenue, equalize taxation and for other purposes." The Congressional debates are eloquent testimony that the measure was purely a revenue bill. Cong. Rec. Vol. 75, Part 10, pp. 10529 et seq.

that the Tariff Act of 1930 clearly represented an exercise by Congress of its power to regulate foreign commerce; that "the purpose of the Congressional regulation of the commerce [i.e. exemption from the tax] would fail if the state were free at any stage of the transaction to impose a tax which would lessen the competitive advantage conferred" by Congress; and that "The state tax in the circumstances must fail as an infringement of the Congressional regulation of the commerce." Id. at 429. Thus, the exemption from tax was clearly considered an exercise of the commerce power.

Petitioner argues that duties under some tariff acts have been *imposed* under the power to regulate foreign commerce, *Board of Trustees v. United States*, 289 U.S. 48 (1933) (Petition, p. 11); but in other tariff acts this Court "was forced to rely on the constitutional power to levy taxes," to sustain the imposition, citing *J. W. Hampton, Jr. & Company v. United States*, 276 U.S. 394 (1928) (Petition, p. 12). It is very questionable whether petitioner's interpretation of the *Hampton* case is correct, but entirely apart from this flaw, petitioner's argument misses the point. We are not here dealing with inferences to be drawn from the *imposition* of a tax by Congress, we are here concerned with inferences to be drawn from an *exemption* from tax. Whether or not Congress has *imposed* the taxes on liquor under the taxing power is immaterial. The question in this case is whether Congress has *relieved* liquor manufactured in bond and committed to export or use as ships' stores from taxes by reason of its exercise of the commerce power or solely by reason of its exercise of the taxing power. We respectfully submit that the answer is to be obtained not by a consideration of cases dealing in general terms with the *imposition* of taxes or duties by the Federal Government but by examination of the specific *exemption* provisions contained in the Tariff Act of 1930.

(c) The Exemption from Tax contained in the Tariff Act of 1930 represents an exercise by Congress of its commerce power.

The courts below held that the relevant sections of the Tariff Act of 1930 and the regulations issued thereunder which chart an intricate and detailed procedure for the tax-free exportation of certain liquor *operate as an exercise of the commerce power by the Federal Government* to the end that this particular phase of commerce (which normally is subjected to heavy domestic taxation) may be exported free of the burdens of domestic taxation. The specific immunity from federal taxes contained in the Tariff Act of 1930 carries with it an inferred immunity from state taxes, just as the Supreme Court held the act did in the *Gulf Oil* case, *supra*. The purposes of the congressional regulation applicable to this phase of foreign commerce would fail if the state were free at any stage of the commerce to impose a tax which would lessen the competitive advantage conferred by Congress upon the said spirits or infringe on the congressional regulation of this class of foreign commerce.

The Tariff Act of 1930 is entitled "An Act to provide revenue, *to regulate commerce with foreign countries*, to encourage industries of the United States, to protect American labor, and for other purposes." A clearer expression of congressional purpose to regulate foreign commerce could not be written; and this Court has held that where Congress asserts, as it has in the Tariff Act of 1930, it is exercising its power to regulate commerce, that assertion will be recognized by the judiciary *and the Act will be construed as an exercise of the commerce power. Board of Trustees v. United States, supra.*

In the Tariff Act of 1930, as amended, Congress extended protection from taxation (1) to certain *imports* manufactured in bond for export or for use as ships' stores. *In the*

same Act and as part of the same sections, i.e., Sections 309, 311, and 313, Congress provided protection from taxation, (2) to certain *domestic* liquor prepared in bond for exportation or sale for use as ships' stores.

In the *Gulf Oil* case this Court concluded that the provisions incorporated in this specific Tariff Act of 1930 referred to in clause (1) above amounted to congressional regulation of the commerce and that local taxation of the goods while within the commerce regulated by the Federal Government (i.e., while within the process of export in bond) would nullify the congressional design. In the face of these facts, what possible basis is there for coming to a different conclusion with respect to the provisions of clause (2) above? *Why should one half of the congressional scheme (applied to imported goods prepared for export) be given any greater effect than the other half of the congressional scheme (applied to domestic liquor prepared for export)? As the lower courts concluded, there is every reason to give equal effect to the provisions of the Tariff Act of 1930 whether they relate to imported goods or to domestic goods, where such provisions are placed side by side in the same sections of the Act, and had as their uniform purpose protection of a segment of commerce from the burdens of heavy taxation in order that such commerce (i.e., exportation to foreign countries or use as ships' stores) might be stimulated.* This is particularly true where this Court has already held that the Tariff Act in which *both* of these provisions occurred operated as a congressional regulation of the commerce. In summary: Congress was well aware that some goods are subjected to heavy import duties and other goods are subjected to extremely burdensome domestic taxation; that in either case such taxation could effectively preclude exportation of the goods, or their sale for use as ships'

stores; and Congress, in the exercise of its power over foreign commerce, sought to insure the tax-free exportation of *both* types of commodities.

(d) Petitioner's restrictive interpretation of the powers of Congress and the purposes of the Tariff Act of 1930 and its exemptions is clearly erroneous.

Petitioner concedes that certain exemption provisions in the Tariff Act of 1930 represent an exercise of the commerce power (*Gulf Oil* case); but petitioner is forced to contend that adjacent clauses dealing with the same subject are an exercise *solely* of the taxing power. The inherent unreasonableness of this position is illustrated by the following excerpts from relevant sections of the Act, as amended. The words which, under petitioner's theory, are an exercise of the commerce power are printed in italics, the words which, according to petitioner's theory, are an exercise *solely* of the taxing power are printed in boldface type, and the words which presumably are an exercise of both powers are printed in standard type.

> "*All articles manufactured in whole or in part of imported materials,* **or of materials subject to internal-revenue tax,** and intended for exportation *without being charged with duty,* **and without having an internal-revenue stamp affixed thereto,** shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six * * *.
>
> **"Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section** * * *." Tariff Act of 1930, as amended, Sec. 311, 19 U.S.C. Sec. 1311.

"(a) *Articles of foreign* **or domestic** origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, *from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty* **and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax** —(for supplies of vessels employed in the fisheries, or engaged in foreign trade, etc.)" Tariff Act of 1930, as amended, Sec. 309, 19 U.S.C. Sec. 1309.

Petitioner's theory that the courts must unravel the provisions of the Tariff Act of 1930 to separate the phrases bearing on foreign commerce in *imported* goods from the phrases bearing on foreign commerce in *domestic* goods, giving effect to the former as an exercise of the commerce power, and treating the latter as solely an exercise of the taxing power does not commend itself to reason. This is particularly true where, as the District Court of Appeal pointed out, "the purpose to regulate and encourage commerce permeates the entire congressional plan." The lower courts were certainly justified in refusing to adopt petitioner's vivisection theory in view of the clear warning of this Court expressed in *Board of Trustees v. United States, supra*, with reference to a related problem in a similar tariff act.

"* * * if the Congress * * * asserts * * * that it is exercising it [the commerce power], *the judicial department may not* attempt in its own conception of policy to distribute the duties thus fixed *by allocating some of them to the exercise of the admitted power to regulate commerce and others to an independent exercise of the taxing power. The purpose to regulate for-*

eign commerce permeates the entire congressional plan." (289 U.S. at 58)

Moreover, petitioner's claim that the commerce power of Congress extends only to the exemption from local taxation of *imported articles* designed *for export* and does not extend to the exemption from local taxation of *domestic* articles designed *for export* would effectively stultify legitimate congressional action. Petitioner's restrictive interpretation would necessarily result in encouraging the importation and use of *foreign products for export in preference to domestic products,* in order to secure the tax exemption benefits of the Act. It would frustrate one of the major purposes of the Tariff Act, i.e. "to encourage industries of the United States" and encourage exportation of *domestic* goods. In short, petitioner asks this Court to deny to the Congress power to exempt domestic products destined for export from local taxation. This request, if granted, would state a principle and constitute a general precedent which would leave Congress impotent to effectuate its avowed purpose to aid and encourage the growth and development of domestic industry and the exportation of domestic goods.

(e) Petitioner's attempted distinction between imports and articles of domestic origin is spurious.

Petitioner also relies on the theory that *imports* processed in bond for exportation were exempted from tax in the *Gulf Oil* case, whereas in this case, articles of *domestic origin* processed in bond for exportation are involved. Petitioner says a distinction exists because the crude oil in the *Gulf Oil* case "retained its status as an import and as a consequence was immune *as an import* from local taxation" (Petition, p. 16).

Based on this premise that the oil in the *Gulf Oil* case "retained its status as an import," petitioner attempts to distinguish the *Gulf Oil* case on the theory that Congress would appropriately apply the *commerce power* to imports but would use only the *taxing power* in granting an exemption from tax to domestic products.

The facts in the *Gulf Oil* case are precisely the converse of what petitioner's argument assumes them to be. The "imports" in the *Gulf Oil* case *had lost their status as imports*. That was the whole point of this Court's decision. Some of the oil imported into New York had been there for a period of seven months. During this period the oil was subjected to elaborate treatment processes which *changed its character* and converted it to Bunker "C" fuel oil. Transcript of Record on Appeal to the United States Supreme Court, pp. 100-102, 116-124, and Brief for Petitioner on Writ of Certiorari, pp. 11-12, *McGoldrick v. Gulf Oil Corp., supra.*

And this Court went out of its way to point out that the exemption afforded the oil in the *Gulf Oil* case *did not arise by reason of its status as an import* but rather by reason of its status as an item *segregated in bond for export*—an item of commerce which had been singled out for protection from tax by Congress and segregated from the mass of goods in this country *by the bonding provisions* to achieve that protection. In the *Gulf Oil* case this Court specifically noted:

> "For present purposes we may assume, without deciding, that had the crude oil not been imported *in bond* it would, upon its manufacture, have become a part of the common mass of property in the state and so would have *lost its distinctive character as an import and its constitutional immunity as such* from state taxation." (309 U.S. at 423)

In other words, contrary to petitioner's assumption that the oil in the *Gulf Oil* case "retained its status as an import," this Court decided the case on the assumption that the goods had *lost* their status as imports. This Court took the oil out of the import class, stripped it of its "original package" protection, and decided the issue solely on the effect of the congressional scheme of regulation and control exemplified in the bonding provisions, as if the oil was a domestic product held in bond for export. Since the oil lost its distinctive character as an import by reason of its processing and manufacture, it was in the same category as a domestic product, and the lower courts were perfectly correct in applying the holding of the *Gulf Oil* case to the domestic liquor processed and shipped in bond for export in this case.

(f) Respondent's liquors were also exempt from this local tax under the export clause (Art. I, Sec. 10, Clause 2) of the United States Constitution, and the judgment of the courts below is amply supported by this ground.

The courts below held this liquor was exempt from tax because of action taken by the Federal Government in the exercise of its commerce power under the Tariff Act of 1930 to permit the tax-free exportation of the liquor. But as the facts plainly show, the liquor was also exempt from tax under the export clause of the United States Constitution, and this alternative ground also supports the judgment. *Carson Petroleum Co. v. Vial,* 279 U.S. 95 (1929), *Texas & N.O.R.R. v. Sabine Tram Co.,* 227 U.S. 111 (1913).

Clearly, the liquor had been "shipped, or entered with a common carrier for transportation to another state", *Coe v. Errol,* 116 U.S. 517, 527 (1886); and "there was nothing equivocal in the transaction which created even a probability that the oil [liquor in this instance] would be diverted to

domestic use." *Richfield Oil Corporation v. State Board of Equalization*, 329 U.S. 69, 83 (1946). This was not like the gasoline in *Joy Oil Company v. State Tax Commission*, 337 U.S. 286 (1949) which "might have been diverted to domestic markets" because in this case "the character of the property [i.e. liquor under bond for export] * * * made export certain for all practical purposes." (337 U.S. at 288)

This issue is largely one of fact and the findings of the trial court clearly support the judgment. *There is no occasion for this Court to grant certiorari to review a question which is largely one of fact, without general significance.*

Respondent therefore also urges this alternative contention in support of the judgment, a procedure which this Court has said is proper. *Langnes v. Green*, 282 U.S. 531, 535-539 (1931); *Walling v. General Industries Co.*, 330 U.S. 545, 547 (1947).

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

STODDARD B. COLBY,
THEODORE R. MEYER,
HART H. SPIEGEL,
Attorneys for Respondent.

BREED, ABBOTT & MORGAN
BROBECK, PHLEGER & HARRISON,
Of Counsel
San Francisco, California, October 31, 1956